IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1965

NO. ~~500~~ 99

HARRIETT LOUISE ADDERELY, TIMOTHY BENJAMIN, JESSEY EVANS BLUE, ELIJAH BRADSHAW, MARY DELL BRADLEY, JUANITA ANNE CARRUTHERS, GALE SYLVIA CHRISTOPHER, GERALDINE FIELDS, CONSEIVILLAIE GOODSON, RUBIN EUGENE HOWARD, GEROLIN HICKS, RAYMOND W. JAMES, CORRINE JOHNSON, NELLIE MAE JOHNSON, CAROLYN YVONNE JOHNSON, RICHARD SIMPSON JONES, III, MABEL ELIZABETH LENON, SAMUEL OTIS MACKEY, COUNCIL MILLER, JR., PATRICIA A. MAYS, JACQUELYN GRACE MILLER, ROBERT THOMAS MOSES, HELEN MADDOX McGHEE, HARRIS EDWARD JOHN PERRY, CHARLES KENNETH ROGERS, JUNE DELORES RAINEY, JAMES LAWRENCE SHEPPARD, VIVILORIA JEAN THOMPSON, TOMMIE JEAN WRIGHT, WILLIAM B. WILCOX, NORMA ALFREDA WALLS,

Petitioners,

-vs-

STATE OF FLORIDA,

Respondent.

Petition for a Writ of Certiorari to the District Court of Appeal, First District State of Florida

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1965

NO._____

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Petitioners,

-vs-

STATE OF FLORIDA,

Respondent.

Petition for a Writ of Certiorari to the District Court of Appeal, First District State of Florida

Petitioners pray that a writ of certiorari issue to review the judgment of the District Court of Appeal, First District of Florida, entered in the above-entitled cause on May 11, 1965, and made final, upon the denial of the petition for rehearing, on June 7, 1965.

OPINIONS BELOW

The Judgment of Affirmance of the Circuit Court of the Second Judicial Circuit in and for Leon County, Florida, affirming jury verdicts and judgments of conviction (R 67), is unreported and appended hereto *infra* at p. A. 1.

The opinion of the Florida District Court of Appeal denying common law certiorari to review the decision of the Circuit Court (and denying rehearing) (R 83) is reported at 175 So. 2d. 249 and appended hereto *infra* at p. A. 8. The Order of the Florida District Court of Appeal denying petition for rehearing is appended hereto *infra* at p. A. 9.

QUESTION PRESENTED

Does the arrest and conviction of a group of Negroes for violating a state statute prohibiting "trespass . . . with a malicious and mischievous intent", when based solely on said Negroes peaceful congregation in front of the County jailhouse for the purpose of protesting the segregated facilities within the jail as well as the previous arrest of other anti-segregation demonstrators, deny said Negroes' rights of free speech, assembly, petition, due process of law and equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States?

JURISDICTION

The final judgment of the Florida District Court of Appeal, upon its opinion of May 11, 1965, was entered on denial of the petition for rehearing on June 7, 1965 (R 83, 86; A 8, 9). The jurisdiction of this Court is involved under Title 28, United States Code, § 1257(3).

The Florida District Court of Appeal, by denying common-law certiorari, effectively affirmed the judgment below by holding that the decision of the Circuit Court did not deviate from essential requirements of law. See *Dresner v. City of Tallahassee*, Fla. 1964, 164 So. 2d 208, 210, and *Allen v. Miami*, Fla. App. 1962, 147 So. 2d 566, 567. Said Florida District Court of Appeal is the highest state court in which a decision could be had in the case at bar since neither appeal nor certiorari lies to the Florida Supreme Court under Art. 5 § 4(2) of the Florida Constitution and Florida Appellate Rules #2.1a(5)(b) and 4.5c(6), and the Florida Supreme Court is no longer empowered to issue writs of common-law certiorari. See *Dresner v. City of Tallahassee, supra*, at 210, and *Robinson v. State*, Fla. 1961, 132 So. 2d. 3, 5.

STATUTE INVOLVED

The pertinent section of the trespass statute involved, Florida Statute § 821.18, Comp. Gen. Laws 1927, § 7391, states as follows:

> "Every trespass upon the property of another, committed with a malicious and mischievous intent, the punishment of which is not specially provided for, shall be punished by imprisonment

not exceeding three months, or by fine not exceeding one hundred dollars"

STATEMENT OF THE CASE

Proceedings Below

Petitioners seek review of the decision of the Florida District Court of Appeal upholding the Circuit Court's affirmance of their trespass convictions by the County Judge's Court, convictions rising out of a peaceful civil rights demonstration.

Petitioners were 32 members of a group of 107 Negroes who were arrested in front of the Leon County jailhouse in Tallahassee, Florida, on September 16, 1963, for violating Fla. Stat. § 821.18, which prohibits "trespass . . . committed with a malicious and mischievous intent . . . " (R 2-63, 184)

At the jury trial in the County Judge's Court in and for Leon County Florida, all the evidence demonstrated conclusively that petitioners were peacefully congregating in front of the County jailhouse for the purpose of protesting the segregated facilities within as well as the previous arrest of other anti-segregation demonstrators; a full summary of the testimony adduced at trial (R 87-223) appears in the following section of this Statement.

Nevertheless, the jury found petitioners guilty and the trial court entered judgments of conviction and sentences upon such finding (R 2-63, odd# pages; 67).

The Circuit Court of the Second Judicial Circuit in

and for Leon County, Florida, affirmed the trespass judgments and sentences on November 13, 1964 (R 67, A 1).

The District Court of Appeal, First District of Florida, denied a petition for a common law writ of certiorari on May 11, 1965 (R 74, 83; A 8) and denied a petition for rehearing on June 7, 1965 (R 83-83; A 9).

Summary of Evidence

The following summary of evidence adduced at trial in no way conflicts with the facts as set forth in the opinion of the Circuit Court (R 67; A 1).

On September 15, 1963, Petitioners, or at least some of them, met on the campus of Florida A. & M. University to discuss the arrest the previous night of other students who had been peacefully protesting segregation in certain downtown Tallahassee theatres. It was mutually decided that on the following morning a group would form on the A & M campus and march to the jailhouse where it was believed the arrested demonstrators were being incarcerated. The purpose of the demonstration was to *peacefully* protest segregated facilities at the jail and the prior arrest of fellow demonstrators (R 185, 186, 190, 191, 139, 140).

On September 16, 1963, around 9:00 a.m., about 250 students including petitioners met at the appointed place and proceeded to walk in a peaceful group the approximately one mile to the Leon County Jail (R 186, 187). The group made its way through the streets of Tallahassee in a dignified and self controlled manner, encountering no trouble or difficulty along the way. (R 187).

Somewhere between 9:30 and 10:00 o'clock, the group of unarmed and orderly (R 187) students arrived in the vicinity of the Leon County Jail. They walked up the driveway (R 188, 189) and stood 1-2 feet from the base of the steps leading into the jail interior. Deputy Sheriff Dekle, who met them there, requested that they step back to about the middle of the driveway (R 99, 100, 189).

This request was immediately obeyed and the students fell back (R 189). They did not again move toward the jail (R 189). The demonstrators never went inside the jail house, nor even on its steps but stood on a portion of the driveway, the adjacent parking lots, and certain grassy areas in front of the jail building. (R 106, 126).

Deputy Sheriff Dekle testified that his request to move back from the entrance to the jail was obeyed, that the entrance to the jail was not obstructed, and that jail business was not interfered with; he further testified that nobody got hurt, pushed or shoved, and that the students carried no "sticks or stones or bricks or bats or anything like that" (R 100, 106):

> "Q. Other than the singing and the handclapping, were they doing anything other than just standing around?
>
> A. Well, they had their own little dance, I guess. They were jumping up and down and singing and clapping their hands." (R 100)

There was testimony that hollering back and forth between persons in the jail and outside demonstrators occurred at one time (R 98).

After the demonstration proceeded for a while, Sheriff W. P. Joyce arrived and took charge. He drove into the driveway, parked his car and went into the jail to inquire if everything was all right. He found that it was, gave instructions to the jailers and deputies, and then proceeded outside (R 126).

For five or ten minutes the Sheriff watched the demonstration (R 127), and then, spotting two student leaders whom he knew, decided to end it. He walked over to the two, one being petitioner Blue, and told them they would be subject to arrest for trespassing if they did not leave the jail grounds. The leaders made no effort to disperse the group (R 131).

The Sheriff next told the two leaders that he would give them ten minutes to discuss the matter among themselves and would have to take action if they had not left by then. After 8 or 10 minutes, the Sheriff announced to the group that they were in violation of the law and it would be necessary to arrest them if they did not disperse and leave the jail. Upon hearing this statement, some of those who were standing sat down (R 131, 132).

Another minute or two passed and the Sheriff placed the group under arrest (R 133). Some of those arrested were standing on the public sidewalk (R 195, 196, 203) and others could not have left had they so wanted on account of restraint or intimidation by police officers (R 201, 202, 204, 205).

The Sheriff testified that he had at least 30 or 40 Deputy Sheriffs, City Police Officers and Highway Patrolmen on the scene (R 138).

Federal Question Raised

Petitioners assert that their arrests and convictions for trespass-committed-with-a-malicious-and-mischievous-intent violate their rights of free speech and assembly, petition, due process of law and equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States; petitioners assert, in other words, that the Florida trespass statute was unconstitutionally applied in the circumstances of the case at bar.

Petitioners' assertion was raised in their Motion to Quash the Informations (R 64), Motion for a Directed Verdict for Defendants at the close of the State's case (R 165), Motion for a Directed Verdict for Defendants at the close of all the evidence (R 178), and Motion for New Trial, all of which were denied by the trial court (R 88, 179-183, 206). The trial court ruled that *Edwards v. South Carolina*, 1963, 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed 2d 697, "would have little or no application in this case . . ." (R 179).

The Circuit Court similarly rejected petitioners' assertion that "the statute, § 821.18, Florida Statutes, as applied to the appellants' in this case, is invalid as violative of the constitutionally protected rights of free speech, free assembly and freedom to petition for redress of grievances of appellants" and held that "Edwards is not controlling or persuasive . . ." (R 69, 73; A 3, 7).

The Petition for a Common Law Writ of Certiorari filed in the Florida District Court of Appeal again specifically raised the Federal question involved (R 74-82, and see especially pp. 77-80), the Petition being grounded upon

the explicit contention that the Judgment of Affirmance and Opinion of the Circuit Court below "deviated from" and "was contrary to essential requirements of law . . ." (R 75, 78, 79, 81).

The Petition for Rehearing filed in the Florida District Court of Appeal reiterated petitioners' assertion and cited the recent *Cox v. Louisiana* cases, 1965, 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed. 2d 471, and 379 U.S. 559, 85 S.Ct. 476, 13 L.Ed. 2d 487[1] in addition to *Edwards v. South Carolina, supra* (R 84, 85).

The Florida District Court of Appeal's per curiam denial of certiorari (and rehearing) effectively affirmed the convictions and judgments below by holding that the decision of the Circuit Court did not deviate from essential requirements of law, i.e., did not deprive petitioners of their Federal constitutional rights of free speech, assembly, petition, due process of law and equal protection of the laws (R 84-86; A 8, 9). See *Dresner v. City of Tallahassee, supra, Robinson v. State, supra,* and *Allen v. Miami, supra.*

REASONS FOR ALLOWANCE OF WRIT

1.) The decision below is in conflict with *Edwards v. South Carolina*, 1963, 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed 2d 697, *Cox v. Louisiana*, 1965, 379 U.S. 536, 85 S.Ct. 453, 13 L.Ed 2d 471, and *Cox v. Louisiana*, 1965, 379 U.S. 559, 85 S.Ct. 476, 13 L.Ed. 2d. 487, as it holds petitioner criminally liable for exercising their constitutional rights of

[1]The *Cox* cases were decided by this Court after petitioner's main brief was filed in the Florida District Court of Appeal; the cases were not mentioned in respondent's brief in opposition but were fully discussed in petitioner's reply brief.

'free' speech, assembly and petition. The three cases cited above merely extend the traditional freedom of expression rights set forth in a long line of cases starting with *Gitlow v. New York*, 1925, 268 U.S. 652, 45 S.Ct. 625, 69 L.Ed. 1138, and *DeJonge v. Oregon*, 1936, 299 U.S. 353, 57 S.Ct. 255, 81 L.Ed. 278, to instances of reasonable demonstrations in today's world.

In the *Edwards* case, *supra*, this Court reversed the common-law breach of peace convictions of 187 Negroes who had demonstrated on the State House grounds to peacefully protest South Carolina's discriminatory laws and actions. In the case at bar, a demonstration to protest Florida's discriminatory laws and actions was not only similarly peaceful, but also similarly reasonable in view of the Florida Constitution and statutes[2] (See Florida Constitution, Article XII, § 12, Article XVI, § 24, Fla. Stat. § 228.09, 230.23(4)(a), 230.233, 233.43(3), 239.01, 241.39, 741.11-741.20, 798.04-798.05, 350.21, 352.03-352.18, *945.08* [*Segregation of Prisoners*]), and the actions of the state's power structure (See "Report on Florida" by the Florida Advisory Committee to the U.S. Commission on Civil Rights, particularly pp. 33-39). In the *Edwards* case, as in the case at bar, the statute as applied violated rights to free expression and was void for vagueness; in neither case did the criminal convictions result "from the even-handed application of a precise and narrowly drawn regulatory statute . . .", *Edwards v. South Carolina*, *supra*, at 372 U.S. 236.

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[2]The latest (1963) full edition of Florida Statutes Annotated, 29 F.S.A. "General Index E-O" explicitly lists racially discriminatory laws under the heading "NEGROES".

In the *Cox* cases, *supra*, this Court reversed *Cox's* convictions for (1) breach of the peace, (2) obstructing public passages, and (3) picketing or parading in or near a State Court House with the intent of interfering with the administration of justice. Factual similarities between the *Cox* cases and the case at bar are peculiarly striking:

(1) The civil rights demonstration in the *Cox* cases and the case at bar took place the day after the arrest of students of a Negro college for protesting segregation in private places of public accomodation, downtown store lunch counters and movie theatres, respectively (*Cox* cases, 13 L.Ed 2d 475).

(2) The civil rights demonstration occurred after a student meeting at which plans were made to protest both such segregation and the previous arrests by marching to the jail where the arrested students were being held (in the *Cox* cases, the relevant parish jail was located on the upper floor of the Court House, and in the case at bar, the arrested persons were believed to be held in the Leon County Jailhouse). (*Cox* cases, 13 L.Ed. 2d 475).

(3) The day after the arrests, the demonstrators (about 2000 students in the *Cox* cases, and about 250 students in the case at bar) proceeded in a peaceful and orderly manner. (*Cox* cases, 13 L.Ed. 2d 475-476).

(4) The demonstrators peacefully, properly and without violence or any threat thereof, exercised their freedom of expression at the site involved (in the *Cox* cases, 13 L.Ed. 2d 476-477, the demonstration consisted of picket signs, singing, pledge of allegiance to the flag, and speech; in the case at bar, it consisted of a "little

dance . . . jumping up and down, and singing and clapping their hands").

(5) The demonstrators could be heard by persons in the jail (in the *Cox* cases, 13 L.Ed. 2d 477, the prisoners sang in response to the demonstration, a response which yielded the demonstrators' cheers and applause, and in the case at bar at one time hollering back and forth between persons in the jail and the outside demonstrators occurred).

(6) The demonstrators obeyed police officials' orders or requests to stay in a certain place (in the *Cox* cases, 13 L.Ed. 2d 476, the Police Chief's order to " 'confine' the demonstration 'to the west side of the street' ", and in the case at bar, Deputy Sheriff Dekle's request to stay back to about the middle of the driveway) and the demonstrators never went or attempted to go inside the jail.

(7) Police officers later gave the demonstrators a certain amount of time to demonstrate before being subject to arrest (testimony placed the time limit at seven minutes in the *Cox* cases, 13 L.Ed. 2d 496, and ten minutes in the case at bar).

(8) The demonstrators later refused to break up the demonstration when the Sheriff ordered them to do so. (*Cox* cases, 13 L.Ed. 2d 497).

The *Cox* cases, 13 L.Ed. 2d 478-482 held that the breach of peace conviction infringed free speech and assembly as the demonstration was orderly and involved no violence or threat thereof by the students; fear of violence

on the part of the audience was held irrelevent. But in the case at bar, the Circuit Court held that security reasons and the State's alleged fear of violence or illegal acts on the part of persons inside the jail justified the convictions. The *Cox* cases also held the breach of peace statute unconstitutionally vague as it allowed punishment "merely for peacefully expressing unpopular views", 13 L.Ed. 2d 482. Punishment in the case at bar rests on the same ground.

The obstructing-public-passages conviction in the *Cox* cases was reversed, (although the sidewalk was definitely obstructed and the statute was held constitutional on its face), because there was no "uniform, consistent and nondiscriminatory application" of the statute, 13 L.Ed. 2d 484, 482-486. The case at bar presents the only Florida case interpreting or applying trespass-committed-with-a-malicious-and mischievous-intent with respect to demonstrations or other constitutionally protected freedom of expression.

The *Cox* conviction for picketing-or-parading-in-or-near-a State-Court-House was reversed, although the statute was held constitutional on its face, 13 L.Ed. 2d 492, because the state officials gave permission for the demonstration to take place where it did, "at least for a limited period of time", thus giving rise to State-entrapment in violation of the due process clause, 13 L.Ed 2d 496; the Sheriff's order to disburse was held *ineffective* in removing "the prior grant of permission", 13 L.Ed. 2d 497. Similarly, in the case at bar, the record clearly shows Deputy Sheriff Dekle's grant of permission to demonstrate around the middle of the driveway, with no time

limitation, and the Sheriff's later order to disperse after a ten minute period.

Petitioners submit that the *Edwards* and *Cox* cases are directly in point and clearly reveal the Florida District Court of Appeals' error in holding that the Circuit Court's opinion did not deviate from essential requirements of law by infringing petitioners' constitutional rights of free speech, assembly, and petition.

2.) The decision below is in conflict with *Hamm v. City of Rock Hill*, 1964, 379 U.S. 306, 85 S.Ct. 384, 13 L.Ed. 2d 300[3] in which the 1964 Civil Rights Act was held sufficient to reverse state trespass convictions for peaceful store-luncheon-facility-sit-in-demonstrations under the doctrine of abatement. The case at bar as well as the *Cox* cases, *supra*, really involve reasonable demonstrations to secure inter alia admittance, free from racial discrimination, to private places of public accomodation covered by the 1964 Civil Rights Act (upheld as constitutional on its face and as applied in *Heart of Atlanta Motel, Inc. v. U.S.*, 1964, 379 U.S. 241, 85 S.Ct. 348 13 L.Ed. 2d 258, and in *Katzenbach v. McClung*, 1964, 379 U.S. 294, 85 S.Ct. 377, 13 L.Ed. 2d 290).

3.) The decision below is in conflict with numerous decisions of this Court prescribing the use of petty criminal statutes for the purpose of interfering with the constitutional rights of minorities, see e.g. *Edwards v. South Carolina*, *supra*, the *Cox* cases, *supra*, *Peterson v. Greenville*, 1963, 373 U.S. 244, 83 S.Ct. 1119, 10 L.Ed. 2d 323,

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[3]See also Blow v. North Carolina, 1965, 379 U.S. 684, 85 S. Ct. 635, 13 L.Ed. 2d 603, and McKinnie v. Tennessee, 1965, 33 L.W. 4319.

Lombard v. Louisiana, 1963, 373 U.S. 267, 83 S.Ct. 1122, 10 L.Ed. 2d 338, *Shuttlesworth v. Birmingham*, 1963, 373 U.S. 264, 83 S.Ct. 1130, 10 L.Ed. 2d 335, *Wright v. Georgia*, 1963, 373 U.S. 284, 83 S.Ct. 1240, 10 L.Ed. 2d 349, and *Thompson v. Louisville*, 1960, 362 U.S. 199, 80 S.Ct. 624, 4 L.Ed. 2d 654.

4.) The decision below is in conflict with *Garner v. Louisiana*, 1961, 368 U.S. 157, 82 S.Ct. 248, 7 L.Ed. 2d 207, in that convictions based on a total lack of relevant evidence violate the Fourteenth Amendment's due process clause. In the case at bar, petitioners' orderly nonviolent demonstration took place near the County Jail, a particularly appropriate location in view of Florida's compulsory jail segregation as well as petitioner's understanding that fellow demonstrators were incarcerated therein. There was *no* evidence that the area was restricted from public use at all times or for limited times or at any time. There was no evidence of signs prohibiting the public from traversing on the area immediately adjacent to the jail, nor was there any evidence produced of an ordinance or state statute rendering the driveway, lawns and parking lots of the County Jail less open to the public than such areas around any other public building. Indeed, petitioners had explicit official permission to demonstrate where they did for some time before their arrest. Moreover, in exercising their constitutional right to peacefully protest segregation, petitioners evidenced no intent to commit (and did not commit) any unlawful act or violence or threat thereof, either to persons or to property; petitioners obeyed all reasonable requests of police officers. Thus, no evidence whatsoever of "trespass . . . committed with a malicious and mischievous intent" appears in the record.

CONCLUSION

WHEREFORE, for the reasons hereinabove stated, it is respectfully submitted that this petition should be granted.

Respectfully submitted,

By:_____

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CERTIFICATE OF SERVICE

I, RICHARD YALE FEDER, Counsel for Petitioner and a member of the Bar of the Supreme Court of the United States, hereby certify that on , 1965, I served copies of the foregoing Petition for Writ of Certiorari on the Respondent by mailing a copy thereof in a duly addressed envelope with air mail postage prepaid to each of the following, to wit, WILLIAM D. HOPKINS, State Attorney, Attorney for Respondent, Lewis Bank Building, Tallahassee, Florida, and EARL FAIRCLOTH, Attorney General of the State of Florida, Capitol Building, Tallahassee, Florida.

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APPENDIX

[TITLE OMITTED]

(CIRCUIT COURT)
JUDGMENT OF AFFIRMANCE

This cause came on for consideration of the appeal of the appellants from the sentences and judgments of of the County Judge's Court of Leon County entered against each pursuant to jury verdicts of conviction; and the pleadings, transcript of trial proceedings, briefs and argument of counsel having been considered, and the Court being advised of its opinion in the premises, it is thereupon

ORDERED AND ADJUDGED that the judgments and sentences appealed be and the same are hereby affirmed, and in due course the mandate of this Court shall issue to the trial court.

The appellants were each charged with and adjudged guilty, after jury verdicts of conviction, of having committed a "trespass with malicious and mischievous intent upon—property owned by Leon County, a political subdivision of the State of Florida—being located at the Leon County jail; contrary to Section 821.18, Florida Statutes." The statute referred to denounces and provides a misdemeanor penalty for "trespass upon the property of another, committed with a malicious and mischievous intent."

The appellants were part of a group of some 250

persons who marched to the premises of the Leon County jail during the mid-morning of October 24, 1963. They were singing, dancing, clapping their hands, but exhibited no violence or threats of violence in the sense of displaying weapons, brandishing clubs, or other menacing gestures. Though they carried no signs and did not seek to address any group, except by singing, the events which had transpired in the community in the immediate past and the manner of approach of the group made it clear that they were engaged in a protest demonstration against certain policies of public officials and recent actions which had taken place or which they thought had occurred.

Upon arrival at the jail a deputy sheriff in charge there requested them to move back from near the entrance to the jail, which they did. Later the sheriff of Leon County, who is the custodian of the jail and responsible for its operation and maintenance, arrived and took charge. He had previously called for a number of law enforcement officers to proceed to the jail and they arrived soon afterwards. After watching the demonstration for five or ten minutes during which those outside the jail, and some of the jail inmates also, continued to sing, dance and clap their hands, the sheriff spotted two persons, one of which was the defendant Blue, whom he recognized as leaders in the demonstration. He sought to persuade them to advise the group to disperse and leave the jail premises and warned that if the group did not leave those who remained would be arrested for trespass. The apparent leaders made no effort to comply with the request. The sherrif told them he would wait ten minutes to give them an opportunity to discuss the matter among themselves and then would have to take action if they had not left. The group did not disperse.

After approximately ten minutes the sheriff announced in loud and clear voice so that all in the group could distinctly hear that they were in violation of the law and if they did not disperse and leave the jail premises it would be necessary to place them under arrest. Upon hearing this statement some of the group left the premises, but others, including the appellants, remained. After a minute or two the sheriff directed his deputies and other peace officers, who had been previously stationed, to arrest those who remained. Arrests were then made of 107 persons, including the thirty-two appellants, who were directed into the jail where they were processed by the normal routine of obtaining information for the jail card, photographing and fingerprinting.

The appellants contend, in substance, that the convictions are illegal, for:

(1) There was no adequate identification of the defendants at the trial as having been among the group which remained on the jail premises at the time of the arrests;

(2) There was no proof of a "trespass", nor, that if there were, such was with malicious and mischievous intent;

(3) That, even if the foregoing grounds are untenable, the statute, Section 821.18, Florida Statutes, as applied to the appellants in this case, is invalid as violative of the constitutionally protected rights of free speech, free assembly and freedom to petition for redress of grievances of appellants.

(1)

The identification of appellants as being among those remaining on the jail premises after the sheriff's command to depart and warning of arrest for failure to do so was accomplished primarily by circumstantial evidence. A reading of the entire transcript discloses adequate, substantial, competent evidence from which the jury may have properly found that from circumstances shown there was a clear inference of identity of each of the appellants as among the guilty trespassers, and that no reasonable hypothesis of innocence could be drawn from such circumstances.

(2)

The "trespass" in this case consisted of remaining on the premises of the jail after a clear and distinct demand of the custodian of the property to depart. The fact that the property involved is owned by a governmental entity and is in a sense public property does not exclude it from being the subject of trespass when it is used for an improper purpose or when the custodian, exercising a reasonable discretion to maintain the property for its intended use or to prevent abuses of its use, demands that it be vacated. All public property is not available as a site for exercising free speech, free assembly, and demonstrative appeals for redress of grievances. Certain property is acquired and maintained for purposes in which such use would be most inappropriate. The living quarters provided a chief executive or other officer would certainly be privileged from such use except with the consent of such officer. The same would be true of areas where for security reasons necessary to the public

interest the public entry may be restricted or completely excluded. To be sure, a large latitude may be demanded by a citizen of opportunities to give expression to freedom to protest, but this does not mean that every publicly owned place is impliedly available as a site for exercising these rights.

It is the view of this Court that the premises of a jail or prison or other custodial institutions are not, as of right, available for massive demonstrations, particularly if they involve emotional attributes, however praiseworthy the motives or objectives may be. A custodial institution is a very delicate, sensitive and potentially tumultuous place. The custodian and responsible heads of such an institution has great responsibilities to the public, to the employees, and to the inmates and he must be vested with a rather broad discretion to control activities not only within the buildings but on the premises near the buildings from which operations within may be affected. It is not necessary that there be sticks, stones, weapons or abusive language to render a group assembly completely out-of-place when congregated on jail premises. The fact that it expresses or arouses deep emotions, or may reasonably be expected to have that effect, may well produce in the mind of a prudent custodian an apprehension that the welfare of the inmates, employees and the public is in jeopardy. Under such circumstances it is not unreasonable for him to demand that the demonstrators quit the premises. If they refuse to do so, those so refusing become trespassers. The definition of trespass which the trial judge gave in his instructions to the jury is "the use of land or real property not belonging to the defendant and without any authority or right to do so". This seems fully in accord with the meaning of that term

which the legislators intended in the enactment of the statute.

The trial judge defined "malicious" to mean "a wrongful act—done voluntarily, unlawfully and without excuse or justification". With regard to the term "mischievous" he said that it means "that the alleged trespass shall be inclined to cause petty and trivial trouble, annoyance and vexation to others". These definitions also appear appropriate and fully expressive of the legislative intent in the use of these terms in F. S. sec. 821.18.

The evidence sustains a finding of violations of the statute.

(3)

Passing to the constitutional question raised, the Court feels that it must, on its own motion, consider its jurisdiction to review same. Art. V, Sec. 4, Fla. Const., vests in the Supreme Court the appellate review of final judgments of trial courts "directly passing upon the validity of a state statute". The circuit court does not have appellate jurisdiction in misdemeanor cases where the trial court directly passes upon the validity of a state statute. Robinson et al v. State, Fla., 132 So.2d 3, and cases cited therein.

This jurisdictional question was not raised by any of the parties in their briefs or oral argument, and both sides apparently proceeded on the concept that no direct attack was made on the validity of the statute per se, but that the challenge made is that the statute was improperly construed and as so construed offended constitu-

tional restraints. This Court is of the view that a contention of that nature does not seek or require trial court action of "directly" passing on the validity of the statute, but rather constitutes another attack to undertake to demonstrate that the construction placed on the statute is erroneous. With this interpretation of the trial court's disposition of the issue it is proper to regard that there is no impediment for this Court to proceed to adjudicate the merits of the contentions made on this appeal.

Appellants rely largely on Edwards v. South Carolina, 372 U.S. 229, 9 L.Ed. 697, 83 S. Ct. 680 to sustain their contentions on the constitutional point. This case has been studied carefully. There are two important differances in that case and the one now under review. In Edwards, the demonstration was on the grounds of the state house at the State Capital, which is an appropriate and more or less traditional area to stage demonstrations to urge political or social action deemed desirable. Furthermore, such an area does not have the sensitive and specialized problems associated with a custodial institution. Also, in Edwards the charge against the appellants was of the common law breach of peace and not trespass. The two offenses may have some attributes in common, but are essentially distinct with different elements and objectives.

This Court deems that Edwards is not controlling or persuasive and conclude that no constitutional rights have been offended by the procedures which were followed up to and including the conviction and sentencing of the appellants.

Finding no reversible error and concluding that the

trial court acted properly in the several rulings challenged on appeal, the judgments are severally

Affirmed.

DONE, ORDERED and ADJUDGED this 13th day of November, 1964.

/s/ Ben C. Willis
BEN C. WILLIS
Circuit Judge

[TITLE OMITTED]

(FLORIDA DISTRICT COURT OF APPEAL)

Opinion filed May 11, 1965.

A Petition for Writ of Certiorari from the Circuit Court for Leon County. Ben C. Willis, Judge.
Joseph C. Segor, Tobias Simon and Herbert Heiken, for Appellants.

Earl Faircloth, Attorney General; and George R. Georgieff, Assistant Attorney General, for Appellee.
PER CURIAM

Certiorari denied.

CARROLL, DONALD, ACTING CHIEF JUDGE, RAWLS, J., and MELVIN WOODROW M., ASSOCIATE JUDGE, CONCUR.

[TITLE OMITTED]

ORDER

(FLORIDA DISTRICT COURT OF APPEAL)

Petitioners' Petition for Rehearing in the above styled cause having been considered,

IT IS ORDERED that the Petition be and the same is hereby denied.

WITNESS the Honorable Wallace E. Sturgis, Chief Judge and Seal of the Court this 7th day of June, A. D. 1965.

RAYMOND E. RHODES
Clerk

A True Copy
ATTEST:

RAYMOND E. RHODES
Clerk First District Court of Appeal
Tallahassee, Florida